

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1630

Citations Affected: IC 5-10-8-10; IC 12-15-15-4.5; IC 16-18-2-23; IC 16-18-2-337.8; IC 16-41-6; IC 27-8-24-4; IC 16-18-2-290.5; IC 16-41-6-2.5.

Synopsis: HIV testing of pregnant women. Conference committee report for EHB 1630. Requires that a pregnant woman be tested for HIV during pregnancy or at the time of delivery unless she refuses. Requires that a pregnant woman's refusal to consent to the test be documented in the woman's medical records. Requires a pregnant woman who refuses to consent to the test to acknowledge that she: (1) received the required counseling and information; and (2) refuses to consent to the test. Specifies certain information that must be provided to a pregnant woman. Requires that information regarding the HIV testing status of a pregnant woman be included on the confidential part of the birth or stillbirth certificate. Makes the results of the tests confidential. Requires the state department of health to: (1) distribute written materials explaining treatment options for individuals who have a positive HIV test and adopt and maintain certain rules; (2) adopt and maintain specified rules; and (3) apply for specified federal funding. Requires a woman who qualifies for certain treatment programs: (1) that have waiting lists to have first priority; and (2) to be automatically accepted into eligible programs that do not have a waiting list. Repeals a provision concerning voluntary HIV testing for pregnant women and a provision containing an obsolete definition. **(This conference committee report: (1) changes the term "standard serological test for HIV" to "standard licensed diagnostic test for HIV"; (2) amends language concerning the dissemination of information to pregnant women who test positive; (3) adds the requirement that the state department of health adopt and maintain specified rules; (4) adds language that requires a woman who qualifies for a program and tests positive for HIV to receive priority in programs with waiting lists and be automatically accepted into eligible programs without a waiting list; and (5) requires the state department of health to apply for specified federal funding.)**

Effective: Upon passage; July 1, 2003.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1630 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-10-8-10, AS ADDED BY P.L.91-1999, SECTION
- 3 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 4 2003]: Sec. 10. **(a)** The state shall cover the **testing required under**
- 5 **IC 16-41-6-4 and the** examinations required under IC 16-41-17-2
- 6 under a:
- 7 (1) self-insurance program established or maintained under section
- 8 7(b) of this chapter to provide group health coverage; and
- 9 (2) contract entered into or renewed under section 7(c) of this
- 10 chapter to provide health services through a prepaid health care
- 11 delivery plan.
- 12 **(b) Payment to a hospital for a test required under IC 16-41-6-4**
- 13 **must be in an amount equal to the hospital's actual cost of**
- 14 **performing the test.**
- 15 SECTION 2. IC 12-15-15-4.5 IS ADDED TO THE INDIANA CODE
- 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 17 1, 2003]: Sec. 4.5. **Payment to a hospital for a test required under**
- 18 **IC 16-41-6-4 must be in an amount equal to the hospital's actual**
- 19 **cost of performing the test and may not reduce or replace the**
- 20 **reimbursement of other services that are provided to the patient**
- 21 **under the state Medicaid program. The total cost to the state may**
- 22 **not be more than twenty-four thousand dollars (\$24,000) in a state**

1 **fiscal year.**

2 SECTION 3. IC 16-18-2-23 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 23. "Approved
4 laboratory", for purposes of **IC 16-41-6 and** IC 16-41-15, has the
5 meaning set forth in IC 16-41-15-1.

6 SECTION 4. IC 16-18-2-337.8 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2003]: **Sec. 337.8. "Standard licensed
9 diagnostic test for HIV", for purposes of IC 16-41-6, has the
10 meaning set forth in IC 16-41-6-0.5.**

11 SECTION 5. IC 16-41-6-0.5 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2003]: **Sec. 0.5. As used in this chapter, "standard licensed
14 diagnostic test for HIV" means a test recognized by the state
15 department as a standard licensed diagnostic test for the antibody
16 or antigen to HIV.**

17 SECTION 6. IC 16-41-6-1, AS AMENDED BY P.L.293-2001,
18 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2003]: Sec. 1. (a) Except as provided in subsection (b), a
20 person may not perform a screening or confirmatory test for the
21 antibody or antigen to ~~the human immunodeficiency virus (HIV)~~ **HIV**
22 without the consent of the individual to be tested or a representative as
23 authorized under IC 16-36-1. A physician ordering the test or the
24 physician's authorized representative shall document whether or not the
25 individual has consented. **The test for the antibody or antigen to
26 HIV may not be performed on a woman under section 5 or 6 of this
27 chapter if the woman refuses under section 7 of this chapter to
28 consent to the test.**

29 (b) The test for the antibody or antigen to HIV may be performed if
30 one (1) of the following conditions exists:

31 (1) If ordered by a physician who has obtained a health care
32 consent under IC 16-36-1 or an implied consent under emergency
33 circumstances and the test is medically necessary to diagnose or
34 treat the patient's condition.

35 (2) Under a court order based on clear and convincing evidence of
36 a serious and present health threat to others posed by an individual.
37 A hearing held under this subsection shall be held in camera at the
38 request of the individual.

39 (3) If the test is done on blood collected or tested anonymously as
40 part of an epidemiologic survey under IC 16-41-2-3 or
41 IC 16-41-17-10(a)(5).

42 (4) The test is ordered under section 4 of this chapter.

43 (5) The test is required or authorized under IC 11-10-3-2.5.

44 (c) A court may order a person to undergo testing for HIV under
45 IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

46 SECTION 7. IC 16-41-6-4 IS AMENDED TO READ AS FOLLOWS
47 [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Subject to subsection ~~(e)~~; **(f)**,
48 if:

49 (1) the mother of a newborn infant has not had a test performed
50 under ~~IC 16-41-6-2.5~~ **section 5 or 6 of this chapter;**

51 (2) the mother of a newborn infant has refused a test for the

newborn infant to detect ~~the human immunodeficiency virus~~ HIV or the antibody or antigen to HIV; and

(3) a physician believes that testing the newborn infant is medically necessary;

the physician **overseeing the care of the newborn infant** may order a confidential test for the newborn infant in order to detect ~~the human immunodeficiency virus~~ HIV or the antibody or antigen to HIV. The test must be ordered at the earliest feasible time not exceeding forty-eight (48) hours after the birth of the infant.

(b) If the physician orders a test under subsection (a), the physician must:

(1) notify the mother of the newborn infant of the test; and
(2) provide ~~human immunodeficiency virus~~ HIV information and counseling to the mother. The information and counseling must include the following:

(A) The purpose of the test.

(B) The risks and benefits of the test.

(C) A description of the methods of HIV transmission.

(D) A discussion of risk reduction behavior modifications, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk.

(E) Referral information to other HIV prevention, health care, and psychosocial services.

(c) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(d) The results of the confidential test ordered under subsection (a) must be released to the mother of the newborn infant.

(e) If a test ordered under subsection (a) is positive, the person who provides the results of the test shall inform the mother of the newborn infant of treatment options or referral options available to the newborn infant.

(f) ~~If the~~ a parent of the newborn infant objects in writing for reasons pertaining to religious beliefs, the newborn infant is exempt from the test under subsection (a).

~~(f)~~ **(g)** The state department shall adopt rules under IC 4-22-2 to carry out this section.

(h) The results of a test performed under this section are confidential.

SECTION 8. IC 16-41-6-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 5. (a) This section applies to:**

(1) a physician licensed under IC 25-22.5; or

(2) an advanced practice nurse licensed under IC 25-23; who provides prenatal care within the scope of the provider's license.

(b) Subject to section 8 of this chapter, an individual described in subsection (a) who:

(1) diagnoses the pregnancy of a woman; or

(2) is primarily responsible for providing prenatal care to a pregnant woman;

shall order to be taken a sample of the pregnant woman's blood

1 and shall submit the sample to an approved laboratory for a
2 standard licensed diagnostic test for HIV.

3 SECTION 9. IC 16-41-6-6 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2003]: Sec. 6. Subject to section 8 of this chapter, if, at the time
6 of delivery, there is no written evidence that a standard licensed
7 diagnostic test for HIV has been performed under section 5 of this
8 chapter, the physician or advanced practice nurse in attendance at
9 the delivery shall order to be taken a sample of the woman's blood
10 at the time of the delivery and shall submit the sample to an
11 approved laboratory for a standard licensed diagnostic test for
12 HIV.

13 SECTION 10. IC 16-41-6-7 IS ADDED TO THE INDIANA CODE
14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2003]: Sec. 7. A pregnant woman has a right to refuse a test
16 under section 5 or 6 of this chapter.

17 SECTION 11. IC 16-41-6-8 IS ADDED TO THE INDIANA CODE
18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
19 1, 2003]: Sec. 8. (a) This section applies to a physician or an
20 advanced practice nurse who orders an HIV test under section 5 or
21 6 of this chapter or to the physician's or nurse's designee.

22 (b) An individual described in subsection (a) shall:

23 (1) inform the pregnant woman that:

24 (A) the individual is required by law to order an HIV test
25 unless the pregnant woman refuses; and

26 (B) the pregnant woman has a right to refuse the test; and

27 (2) explain to the pregnant woman:

28 (A) the purpose of the test; and

29 (B) the risks and benefits of the test.

30 (c) An individual described in subsection (a) shall document in
31 the pregnant woman's medical records that the pregnant woman
32 received the information required under subsection (b).

33 (d) If a pregnant woman refuses to consent to an HIV test, the
34 refusal must be noted in the pregnant woman's medical records.

35 (e) If a test ordered under section 5 or 6 of this chapter is
36 positive, an individual described in subsection (a):

37 (1) shall inform the pregnant woman of the test results;

38 (2) shall inform the pregnant woman of the treatment options
39 or referral options available to the pregnant woman; and

40 (3) shall:

41 (A) provide the pregnant woman with a description of the
42 methods of HIV transmission;

43 (B) discuss risk reduction behavior modifications with the
44 pregnant woman, including methods to reduce the risk of
45 perinatal HIV transmission and HIV transmission through
46 breast milk; and

47 (C) provide the pregnant woman with referral information
48 to other HIV prevention, health care, and psychosocial
49 services.

50 (f) The provisions of IC 16-41-2-3 apply to a positive HIV test
51 under section 5 or 6 of this chapter.

(g) The results of a test performed under section 5 or 6 of this chapter are confidential.

(h) As a routine component of prenatal care, every individual described in subsection (a) is required to provide information and counseling regarding HIV and the standard serological test for HIV and to offer and recommend the standard serological test for HIV.

(i) An individual described in subsection (a) shall obtain a statement, signed by the pregnant woman, acknowledging that the pregnant woman was counseled and provided the required information set forth in subsection (b) to ensure that an informed decision has been made.

(j) A pregnant woman who refuses a test under this section must do so in writing.

SECTION 12. IC 16-41-6-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 9. The state department shall require, on the confidential part of each birth certificate and stillbirth certificate retained by the state department, in addition to the information otherwise required to be included on the certificate, the following information:**

(1) Whether a standard licensed diagnostic test for HIV was performed on the woman who bore the child.

(2) If a standard licensed diagnostic test for HIV was performed:

(A) the date the blood specimen was taken; and

(B) whether the test was performed during pregnancy or at the time of delivery.

(3) If a standard licensed diagnostic test for HIV was not performed, the reason the test was not performed.

SECTION 13. IC 16-41-6-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10. The state department shall distribute to physicians and to other individuals who are allowed by law to attend a pregnant woman information available from the federal Centers for Disease Control and Prevention that explains the treatment options available to an individual who has a positive test for HIV.**

SECTION 14. IC 16-41-6-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 11. (a) The state department shall adopt rules under IC 4-22-2 that include procedures:**

(1) to inform the woman of the test results under this chapter, whether they are positive or negative;

(2) for explaining the side effects of any treatment for HIV if the test results under this chapter are positive; and

(3) to establish a process for a woman who tests positive under this chapter to appeal the woman's status on a waiting list on a treatment program for which the woman is eligible. The rule must:

(A) include a requirement that the state department make a

determination in the process described in this subdivision not later than seventy-two (72) hours after the state department receives all the requested medical information; and (B) set forth the necessary medical information that must be provided to the state department and reviewed by the state department in the process described in this subdivision.

(b) The state department shall maintain rules under IC 4-22-2 that set forth standards to provide to women who are pregnant, before delivery, at delivery, and after delivery, information concerning HIV. The rules must include:

- (1) an explanation of the nature of AIDS and HIV;
 - (2) information concerning discrimination and legal protections;
 - (3) information concerning the duty to notify persons at risk as described in IC 16-41-7-1;
 - (4) information about risk behaviors for HIV transmission;
 - (5) information about the risk of transmission through breast feeding;
 - (6) notification that if the woman chooses not to be tested for HIV before delivery, at delivery the child will be tested subject to section 4 of this chapter;
 - (7) procedures for obtaining informed, written consent for testing under this chapter;
 - (8) procedures for post-test counseling by a health care provider when the test results are communicated to the woman, whether the results are positive or negative;
 - (9) procedures for referral for physical and emotional services if the test results are positive;
 - (10) procedures for explaining the importance of immediate entry into medical care if the test results are positive;
- and
- (11) procedures for explaining that giving birth by cesarean section may lessen the likelihood of passing on HIV to the child during childbirth, especially when done in combination with medications, if the test results are positive.

SECTION 15. IC 16-41-6-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) The state department shall provide that an HIV test history and assessment form from the patient's medical records or an interview with the patient must be filled out. The state department shall develop the form to determine if:

- (1) the patient is HIV positive and has been informed; or
- (2) the patient was tested during the current pregnancy and tested negative or was not tested during the current pregnancy and the HIV status is unknown.

(b) The form required under subsection (a) must identify what special support or assistance for continued medical care the patient might need as a result of a positive test.

(c) A copy of the form must be:

- (1) kept in the patient's medical file;
- (2) kept in the baby's medical file; and

(3) given to the doctor in the hospital designated to administer the newborn HIV testing program.

(d) The state department must maintain a systemwide evaluation of prenatal HIV testing in Indiana. The state department shall prescribe the HIV test history and assessment form and a newborn blood screening form. The state department shall remove all identifying information from the maternal test history before the state department performs its analyses and shall not maintain HIV test history data with identifying information.

SECTION 16. IC 16-41-6-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) Women who:

(1) meet all qualifications to participate in the children's health insurance program, the AIDS drug assistance program, the health insurance assistance program, or any other health care program of the state; and

(2) test positive under section 5 or 6 of this chapter; shall be given first priority on a waiting list for the program if a waiting list exists. If a program does not have a waiting list, the woman described in this subsection shall be automatically approved and accepted into the program.

(b) If the state department determines during the process described in section 11(a)(3) of this chapter that the treatment of a woman who tests positive under this chapter should not be interrupted because of medical necessity, the woman may enter a program described in subsection (a) regardless of the existence of a waiting list for the program.

SECTION 17. IC 27-8-24-4, AS AMENDED BY P.L.91-1999, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Except as provided in section 5 of this chapter, every policy or group contract that provides maternity benefits must provide minimum benefits to a mother and her newborn child that cover:

(1) a minimum length of postpartum stay at a hospital licensed under IC 16-21 that is consistent with the minimum postpartum hospital stay recommended by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists in their Guidelines for Perinatal Care; and

(2) the examinations to the newborn child required under IC 16-41-17-2; and

(3) the testing of the newborn child required under IC 16-41-6-4.

(b) Payment to a hospital for a test required under IC 16-41-6-4 must be in an amount equal to the hospital's actual cost of performing the test.

SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2003]: IC 16-18-2-290.5; IC 16-41-6-2.5.

SECTION 19. [EFFECTIVE JULY 1, 2003] (a) As used in this SECTION, "state department" refers to the state department of health established by IC 16-19-1-1.

(b) The state department of health shall apply for any eligible

- 1 **funding under the federal Ryan White CARE Act (42 U.S.C. 300ff**
- 2 **and 42 U.S.C. 201 et seq.).**
- 3 **(c) This SECTION expires December 31, 2006.**
- 4 **SECTION 20. An emergency is declared for this act.**
(Reference is to EHB 1630 as reprinted April 11, 2003.)

Conference Committee Report
on
Engrossed House Bill 1630

Signed by:

Representative Welch
Chairperson

Senator Miller

Representative Pond

Senator Breaux

House Conferees

Senate Conferees